

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 \* \* \*

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7 ROBERTO PEREZ,

8 Defendant.

Case No. 2:12-cr-00361-APG-GWF

**ORDER DENYING MOTION TO  
DETERMINE ELIGIBILITY FOR  
RELIEF**

ECF No. 27

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10 Defendant Roberto Perez pleaded guilty to one count of possession of a controlled substance  
11 with intent to distribute and one count of being an illegal alien in possession of a firearm. ECF No.  
12 18. He was sentenced to 70 months as to each count, to be served concurrently. ECF No. 26. Perez  
13 subsequently filed a motion to determine whether he is eligible for relief under *Johnson v. United*  
14 *States*, 135 S.Ct. 551 (2015). Perez is not entitled to such relief.

15 *Johnson* deemed unconstitutionally vague the Armed Career Criminal Act's residual clause  
16 defining "violent felony." Perez was not sentenced under that statute. Nor was he sentenced under  
17 a statute or sentencing guideline section that included a residual clause like that ruled  
18 unconstitutional in *Johnson*. He was not deemed a career offender as he had no prior criminal  
19 history. Thus, *Johnson* is not applicable to Perez's case and Perez is not entitled to have his  
20 sentence vacated or modified.

21 Perez's motion is not styled as a motion under 28 U.S.C. § 2255 motion. Nevertheless, I  
22 deny Perez a certificate of appealability because reasonable jurists could not debate my resolution  
23 of this motion and the issues are not adequate to deserve encouragement to proceed further.  
24 *Hayward v. Marshall*, 603 F.3d 546, 553 (9th Cir. 2010) (en banc), *overruled on other grounds by*  
25 *Swarthout v. Cooke*, 562 U.S. 216 (2011); *see also* R. 11 Governing § 2255 Cases in the U.S. Dist.  
26 Cts. ("The district court must issue or deny a certificate of appealability when it enters a final order  
27 adverse to the applicant.").

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1 IT IS THEREFORE ORDERED that Perez's motion (**ECF No. 27**) is **DENIED** and no  
2 certificate of appealability shall be issued.

3 Dated this 29<sup>th</sup> day of June, 2016.

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6 ANDREW P. GORDON  
7 UNITED STATES DISTRICT JUDGE  
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